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[1] Q: Do you hold any director, officer or  
[2] employee positions in any of these other companies?  
[3] A: Yes.  
[4] Q: Which ones?  
[5] A: I'm a director of Riley Power, Inc.,  
[6] Babcock Power Capital.  
[7] Q: Riley Power, Babcock Power?  
[8] A: Babcock Power Capital, BBCC Holding  
[9] Company, Inc. I might be a director in several of  
[10] the other companies. I forget.  
[11] Q: Are you an officer —  
[12] A: Possibly Vogt-NEM, Inc.  
[13] Q: Are you an officer in any of these  
[14] companies?  
[15] A: Yes.  
[16] Q: Which ones?  
[17] A: I think I'm an officer in practically all  
[18] of them.  
[19] Q: Do you have any title, like general  
[20] counsel, of any of these companies?  
[21] A: No. Usually it's just vice-president.  
[22] Q: Do you have any functional responsibilities  
[23] in any of these companies?  
[24] A: I'm the general counsel of Riley Power.

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[1] Q: And other than that, do you have any  
[2] functional responsibilities?  
[3] A: And also Babcock Power Environmental and  
[4] Babcock Power Services.  
[5] Q: Any others?  
[6] A: No.  
[7] Q: Switching —  
[8] A: Excuse me. I'm the secretary of most of  
[9] those, a lot of those companies too.  
[10] Q: Switching to where we started, which was  
[11] you've identified who was involved or who was party  
[12] to some of these discussions between September and  
[13] through November 29, how about from Hudson group?  
[14] Who was involved, to your knowledge, from Hudson  
[15] group?  
[16] A: Nathan Hevrony and Dale Miller.  
[17] Q: Anybody else?  
[18] A: That's who I know.  
[19] Q: How about for BB AG?  
[20] A: Ludger Kramer, Dr. Kraenzlin, possibly Mr.  
[21] Piepenberg. And there were two representatives in  
[22] the Burlington office, Claus Brinkmann and Bernhard  
[23] Hampen.  
[24] Q: Mr. Brinkmann is now deceased, as I

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[1] understand it?  
[2] MR. COMEN: The other way around.  
[3] A: Mr. Hampen.  
[4] Q: Mr. Brinkmann will be happy to hear that he  
[5] is still alive and that I did not have that correct.  
[6] When did the negotiations, for be it the  
[7] Stock Purchase Agreement, the Non-Compete Agreement  
[8] or the promissory estoppel — and if they occurred  
[9] at different times we'll break it down — begin,  
[10] between the buying — between any among these three  
[11] groups that we have now identified, the management  
[12] group, the Hudson group and BB AG?  
[13] MR. COMEN: I'm sorry, what was the  
[14] beginning?  
[15] Q: When did the negotiations begin?  
[16] A: For which documents?  
[17] Q: Well, if there's a distinct — let's start  
[18] with the Stock Purchase Agreement.  
[19] A: Those negotiations began in September.  
[20] Q: Who with respect to the management group  
[21] that you've identified, the BPI group, participated  
[22] in the negotiations with respect to the Stock  
[23] Purchase Agreement?  
[24] A: Jim Wood, Anthony Brandano. I participated

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[1] in giving input.  
[2] Q: What does that mean, "giving input"?  
[3] A: I didn't participate in the negotiations,  
[4] but I gave comments to Jim Wood and Tony Brandano.  
[5] Q: To your knowledge, who participated in the  
[6] negotiations on the SPA for BB AG?  
[7] A: I thought that's what we talked about.  
[8] Q: Okay. Dr. Kraenzlin?  
[9] A: We're talking about the Stock Purchase  
[10] Agreement.  
[11] Q: Right.  
[12] A: Oh, for BB AG. Ludger Kramer and Dr.  
[13] Kraenzlin.  
[14] Q: And how about for Hudson?  
[15] A: I wasn't directly involved in those  
[16] negotiations, so I don't know who exactly  
[17] participated.  
[18] Q: I appreciate your answer you weren't  
[19] directly, but you have no knowledge who  
[20] participated?  
[21] A: I believe that Nathan Hevrony and Dale  
[22] Miller participated, but I don't — I was just  
[23] involved with one meeting in September, and that was  
[24] all. They both were there.

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[1] Q: Who was present at that meeting?  
[2] A: Jim Wood, Anthony Brandano, Dr. Kraenzlin,  
[3] Ludger Kramer, Brian Crush from Nixon Peabody, and  
[4] myself.  
[5] Q: Where was that meeting held?  
[6] A: A hotel in Bedford, Mass., near the  
[7] Burlington office. I think it's a Sheraton.  
[8] Q: Do you recall the purpose of the meeting?  
[9] A: For the Hudson group to buy the stock of  
[10] BBCC Holding Company.  
[11] Q: Was there any discussion at that meeting  
[12] regarding a non-competition agreement?  
[13] A: I think there were some limited discussions  
[14] at that point that the American company would need a  
[15] non-competition agreement.  
[16] Q: What are you referencing when you say "the  
[17] American company"?  
[18] A: The company that was buying the stock of  
[19] BBCC Holding Company, Inc., to protect the U.S.  
[20] market.  
[21] Q: Other than that there would be the need of  
[22] a non-compete agreement to protect the U.S. market,  
[23] do you recall anything else that was said, any more  
[24] specifics, about the scope and details of what that

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[1] non-compete would look like, at least from the  
[2] buyer's perspective?  
[3] A: I can't recall details.  
[4] Q: Did you take any notes at that meeting?  
[5] A: I don't remember.  
[6] Q: Have you searched to see if you took any  
[7] notes at that meeting?  
[8] A: I don't recall searching for notes.  
[9] Q: Well, let me ask you a question. What did  
[10] you do to investigate your — for purposes of this  
[11] deposition, what occurred or did not occur at that  
[12] meeting, what was said with respect to the Stock  
[13] Purchase Agreement or the Non-Compete Agreement?  
[14] A: Just my memory and looking at e-mails.  
[15] Q: What e-mails?  
[16] A: There were a lot of — you know, there's  
[17] constant e-mails going between everybody in  
[18] September and October and November.  
[19] Q: Do you know if those e-mails have been  
[20] produced?  
[21] A: I am pretty sure they have.  
[22] Q: Did you talk to Mr. Brandano at any time  
[23] prior to this deposition for the purpose of getting  
[24] his recollection of that meeting?

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[1] A: About that particular meeting in September?  
[2] Q: Yes.  
[3] A: No, not specifically.  
[4] Q: Did you talk to Mr. Wood about his memory  
[5] of that meeting in connection with preparing to be  
[6] the corporate witness for this deposition?  
[7] A: No.  
[8] Q: Did you ask Mr. Wood or Mr. Brandano  
[9] whether they had any notes themselves of that  
[10] meeting?  
[11] A: I've asked all — for all of their printed  
[12] materials regarding the Stock Purchase Agreement and  
[13] the various documents.  
[14] Q: I appreciate that, but did you specifically  
[15] say, "Do you have any handwritten notes of the  
[16] substance of that meeting?" Have you asked Mr.  
[17] Brandano or Mr. Wood about that?  
[18] A: I didn't ask them specifically whether they  
[19] had any handwritten notes about that meeting.  
[20] Q: Do you know whether there was any e-mail  
[21] traffic back and forth regarding specifically that  
[22] meeting?  
[23] A: There was — we drafted a heads of  
[24] agreement out of that meeting, I believe.

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[1] Q: I'm sorry, a heads of agreement?  
[2] A: Yes.  
[3] Q: What is that?  
[4] A: It's kind of just general principles of  
[5] what was going to be agreed to.  
[6] Q: Do you know if the Non-Compete was included  
[7] as part of that heads of agreement?  
[8] A: I don't recall.  
[9] Q: Do you know if the heads of agreement has  
[10] been produced?  
[11] A: I don't know.  
[12] Q: I will represent to —  
[13] MR. BELLO: Oh, you do have it. I won't  
[14] represent that. He's got it.  
[15] Q: Were there any meetings — let me take a  
[16] step back. With respect to the Non-Compete  
[17] Agreement, have you exhausted your memory, as you  
[18] sit here today, of the discussion, who said what to  
[19] whom, with respect to that topic? And that is that  
[20] there was a need, that the American company would  
[21] need a non-compete to protect it in the U.S. market.  
[22] Does that exhaust your memory?  
[23] A: No.  
[24] Q: Okay. What else do you recall with respect

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(1) to a non-compete at that meeting?

(2) **A:** Oh, at that meeting?

(3) **Q:** Yes.

(4) **A:** Yes, that exhausts that meeting.

(5) **Q:** Was there any discussion of the promissory

(6) notes or promissory notes in general at that

(7) meeting?

(8) **A:** I just don't recall. There's a lot of

(9) discussions about the business transaction, but it

(10) evolved over the last —

(11) **MR. COMEN:** Would you like to take a

(12) minute, since we just established that we produced

(13) the heads of agreement for you, rather than test his

(14) memory, show him the heads of the agreement and

(15) refresh his memory about that specific meeting.

(16) **MR. BELLO:** Again, I'm going to try not to

(17) get into an argument, Steve. He is obligated to

(18) have — he has been designated as the Rule 30(b)(6)

(19) witness. He is obligated to investigate, to gather

(20) facts, and to come prepared to testify as to those

(21) facts. That's the obligation of a corporate

(22) witness.

(23) **MR. COMEN:** Okay. All right. If you want

(24) to get information, you know, I'm sure if you show

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(1) him the document, it will establish what the

(2) subjects of discussion were —

(3) **A:** The September meeting —

(4) **MR. COMEN:** You've answered — there's no

(5) question before you.

(6) **Q:** No, actually, there is a question, which is

(7) your memory of the September meeting with respect to

(8) the subject matter of a non-compete or promissory

(9) notes.

(10) **A:** It just established the bare bones of the

(11) business transaction.

(12) **Q:** Do you recall whether that included any

(13) discussion of promissory notes?

(14) **A:** I don't recall.

(15) **Q:** Do you recall whether a price was discussed

(16) at this meeting or a potential price for the

(17) acquisition?

(18) **A:** There were discussions about pricing and

(19) offsets and additions. There's a big — what things

(20) should be added in, what things should be deducted.

(21) **Q:** When you say "offsets," what are you

(22) referring to, sir?

(23) **A:** There were a lot of liabilities on the

(24) balance sheet that had to be offset for the purchase

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(1) price.

(2) **Q:** Do you recall, if not the exact number, the

(3) range of the purchase price, before the offsets,

(4) that was discussed in September?

(5) **A:** I just don't recall right now.

(6) **Q:** Was it more than \$50 million?

(7) **A:** I think the pricing was always 10 to 20 to

(8) 25 million.

(9) **Q:** Now, other than the meeting that you've

(10) described, were you present at any meeting —

(11) present — whether it was internal, that is, just

(12) among your — either just the BBCC group or the BBCC

(13) group with Hudson group, regarding the terms of the

(14) Non-Competition Agreement at any time between

(15) September and November 29, 2002?

(16) **THE WITNESS:** Could you repeat the

(17) question.

(18) (Question read)

(19) **A:** I was involved with a telephone discussion

(20) in November regarding the Non-Competition Agreement.

(21) **Q:** Who was also involved in that discussion?

(22) **A:** Jim Wood, Tony Brandano, Dale Miller,

(23) Nathan Hevrony.

(24) **Q:** Anybody else?

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(1) **A:** I believe Jeff Stoler may have been on the

(2) call?

(3) **Q:** Who is Mr. Stoler?

(4) **A:** He's with Gadsby & Hannah.

(5) **Q:** Anybody else that you can recall?

(6) **A:** No. That's all I can recall.

(7) **Q:** Tell me everything you can remember about

(8) that conversation.

(9) **MR. COMEN:** I object and direct him not to

(10) answer.

(11) **MR. BELLO:** Mr. Stoler was from Gadsby &

(12) Hannah. Mr. Miller did not work for the entity.

(13) Mr. Hevrony did not — on what basis could you

(14) possibly assert an attorney-client privilege?

(15) **MR. COMEN:** I believe those are privileged

(16) discussions.

(17) **MR. BELLO:** On what basis?

(18) **MR. COMEN:** That Mr. Stoler was

(19) representing at that time the group that was buying.

(20) **MR. BELLO:** No. The witness already

(21) testified he was representing the Hudson group, not

(22) the management group. Mr. Miller was not part of —

(23) was not an employee of either BBCC or what became

(24) the entity.

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[1] Let's stop for a moment. I want to talk  
[2] to — let's see if we should just call the Master,  
[3] because that's a completely inappropriate assertion  
[4] of privilege.  
[5] **MR. COMEN:** Tell him at the same time about  
[6] that document.  
[7] **MR. BELLO:** You can tell him anything you'd  
[8] like.  
[9] (Brief recess)  
[10] **MR. BELLO:** Maybe pull all those  
[11] instructions not to answer into a separate little  
[12] Min-U-Script.  
[13] For the record, let the record reflect that  
[14] the witness has been instructed not to answer on the  
[15] basis of an attorney-client privilege. I've asked  
[16] to understand the basis of the privilege. My  
[17] understanding is now it is claimed that Gadsby &  
[18] Hannah was counsel for all of the parties that  
[19] participated in this conversation, which is  
[20] inconsistent with the witness's testimony from  
[21] earlier in the day.  
[22] **MR. COMEN:** Now let me explain. I don't  
[23] believe that's true. I don't believe you've asked  
[24] him the specific question that if you asked him

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[1] would elicit the answer that Gadsby & Hannah was  
[2] representing all of the people involved in buying  
[3] the entity.  
[4] **MR. BELLO:** Well, we'll let this testimony  
[5] stand as it is on the record.  
[6] **MR. COMEN:** You can clarify it with him.  
[7] I'm sure that's the case.  
[8] **MR. BELLO:** I'm sure you —  
[9] **BY MR. BELLO:**  
[10] **Q:** Did you ever pay —  
[11] **MR. COMEN:** Then at an appropriate time,  
[12] let me elicit, before you ask questions —  
[13] **MR. BELLO:** (Shakes head)  
[14] **MR. COMEN:** Well, fine. Then when we  
[15] present this to the Discovery Master, then I'll  
[16] explain it, if he doesn't want to ask you the  
[17] questions.  
[18] **Q:** Do you have a letter reflecting Gadsby &  
[19] Hannah being retained as your counsel in connection  
[20] with this transaction? Any documentation?  
[21] **A:** Babcock Power Inc. paid Gadsby & Hannah's  
[22] legal bills.  
[23] **Q:** Do you have, up to November 29, 2002, do  
[24] you have a letter reflecting that Gadsby & Hannah

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[1] was representing you in connection with this  
[2] transaction?  
[3] **MR. COMEN:** "You" being who?  
[4] **Q:** Any part of the management group, Mr. Wood,  
[5] Mr. Brandano, the 17 people. Is there any — strike  
[6] that question.  
[7] Do you have a letter or any documentation  
[8] reflecting that Gadsby & Hannah was retained to  
[9] represent BBCC at any time prior to November 29,  
[10] 2002?  
[11] **A:** There was no letter, but the fact —  
[12] **Q:** I'm asking if you had any letter, sir.  
[13] **MR. COMEN:** Just answer his questions. If  
[14] he doesn't want to ask you the right questions,  
[15] we'll deal with it with the Master.  
[16] **Q:** Do you have any documentation of any kind  
[17] reflecting that Gadsby & Hannah was counsel for BBCC  
[18] prior to November 29, 2002?  
[19] **A:** We paid their bills, which reflected the  
[20] time that they spent before November 29th. So  
[21] that's documentation.  
[22] **Q:** You would agree with me, sir, that a party  
[23] can pay bills on behalf — legal bills on behalf of  
[24] another? Would you agree with that as a general

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[1] proposition?  
[2] **A:** I guess so.  
[3] **Q:** Other than the bills — when were those  
[4] bills paid, by the way?  
[5] **A:** December 2002 or —  
[6] **Q:** After the transaction closed, correct, sir?  
[7] **A:** Yes.  
[8] **\* Q:** Do you have any documentation that is dated  
[9] November — anything prior to November 29, 2002,  
[10] that reflects that Gadsby & Hannah had been retained  
[11] as legal counsel for BBCC in connection with the  
[12] transaction?  
[13] **THE WITNESS:** Could you repeat the  
[14] question.  
[15] (Question read)  
[16] **A:** After the meeting in September, it was very  
[17] clear that the management, in order to save the  
[18] company, was aligning itself with the Hudson group,  
[19] and we were on one side of the transaction and the  
[20] German parent was on the other side. And the German  
[21] parent had put two Germans in our offices to oversee  
[22] that process. \*\*  
[23] **MR. BELLO:** Move to strike as nonresponsive  
[24] to my question.

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[1] MR. COMEN: It's precisely responsive, and  
 [2] I don't think Mr. Bello wants to hear and understand  
 [3] the relationships. But, please, it is precisely  
 [4] responsive.  
 [5] MR. BELLO: Move to strike the answer as  
 [6] nonresponsive to my question.  
 [7] Q: My question to you, sir, was not —  
 [8] MR. COMEN: He is explaining to you why —  
 [9] MR. BELLO: Steve —  
 [10] MR. COMEN: — the discussion was  
 [11] privileged and who represented whom.  
 [12] MR. BELLO: Steve, when you're done, you'll  
 [13] let me know.  
 [14] MR. COMEN: Go ahead.  
 [15] MR. BELLO: You're done.  
 [16] \*\*\* Q: My question was, do you have any  
 [17] documentation? That was my question.  
 [18] A: We have documentation —  
 [19] Q: Prior to November 29, 2002, reflecting that  
 [20] Gadsby & Hannah had been engaged as counsel for BBCC  
 [21] in connection with the acquisition?  
 [22] A: We have documentation with us giving input  
 [23] into the various documents to Gadsby & Hannah.  
 [24] Q: And is it your testimony that that reflects

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[1] A: The management was becoming — we were  
 [2] becoming shareholders, and that discussion regarding  
 [3] the Non-Compete was among future shareholders of  
 [4] BBCC Holding Company, Inc.  
 [5] Q: So, if I understand, is it your position  
 [6] that all shareholders come within the privilege? Is  
 [7] that it?  
 [8] MR. COMEN: No. He's made it clear. I'll  
 [9] tell you —  
 [10] MR. BELLO: No, I don't want you —  
 [11] MR. COMEN: I thought you were looking at  
 [12] me and asking me.  
 [13] MR. BELLO: I'm not asking you, Steve.  
 [14] A: We were having a discussion as future  
 [15] shareholders of BBCC Holding Company, Inc.  
 [16] Q: Sir, all I'm asking —  
 [17] A: And Gadsby & Hannah was representing all of  
 [18] us in that —  
 [19] Q: And I'm asking you —  
 [20] MR. COMEN: You let him finish. And he  
 [21] just explained who Gadsby & Hannah was representing,  
 [22] and those were the people with whom the discussions  
 [23] were privileged.  
 [24] MR. BELLO: Do you want to testify, Steve,

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[1] Gadsby & Hannah being engaged as BBCC's counsel? Is  
 [2] that your testimony? \*\*\*  
 [3] MR. COMEN: That's what he said.  
 [4] MR. BELLO: Please, Steve, stop  
 [5] interrupting, please.  
 [6] MR. COMEN: Is that not what he answered?  
 [7] MR. BELLO: Steve, I'm asking you as — I'm  
 [8] asking you to stop interrupting my examination.  
 [9] \* Q: Is it your testimony that that constitutes  
 [10] documentation reflecting that BBCC had engaged  
 [11] Gadsby & Hannah as its legal counsel in connection  
 [12] with this transaction? \*\*  
 [13] MR. COMEN: I object. Would you please  
 [14] repeat that question, because that's unfair. Please  
 [15] ask the prior question about reflecting  
 [16] representation of someone, and then the follow-up  
 [17] question that used the term "BBCC." I believe there  
 [18] were two different "reflecting" questions.  
 [19] (Record read from \* to \*\*, \*\*\* to \*\*\*\*,  
 [20] and \* to \*\*)  
 [21] Q: Now, maybe can you answer my question,  
 [22] please. Is that — is it your position that that  
 [23] reflects the engagement of Gadsby & Hannah as  
 [24] counsel to BBCC in connection with this transaction?

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[1] because we can just have you testify?  
 [2] MR. COMEN: No. Just let him finish.  
 [3] MR. BELLO: We can have you testify.  
 [4] You're doing —  
 [5] MR. COMEN: I hope it's getting clearer.  
 [6] MR. BELLO: That's fine.  
 [7] THE WITNESS: Can I run to the men's room  
 [8] for a second?  
 [9] MR. COMEN: I want to go too. But we'll go  
 [10] separately.  
 [11] (Recess)  
 [12] BY MR. BELLO:  
 [13] Q: Mr. Brantl, what I want to do — and please  
 [14] follow my question, which is I am interested only in  
 [15] one thing right now, documentation, paper.  
 [16] And what I would like to know is, is there  
 [17] any documentation reflecting an attorney-client  
 [18] relationship between BBCC and Gadsby & Hannah with  
 [19] respect to the transaction that is dated prior to  
 [20] November 29, 2002? I'm not asking you about your  
 [21] belief or the group's. That we can save for another  
 [22] day.  
 [23] A: The managers at BBCC were providing Gadsby  
 [24] & Hannah with input regarding the documents



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[1] throughout that period from September through the  
[2] end of November.  
[3] Q: But I'm talking about the establishment of  
[4] an attorney-client relationship, sir. Are you  
[5] saying the day-to-day providing of input, those  
[6] documents, in your view, reflects an attorney-client  
[7] relationship between Gadsby and BBCC? Is that  
[8] right?  
[9] A: We looked at Gadsby & Hannah as our  
[10] attorneys.  
[11] Q: Is there any documentation to reflect that,  
[12] sir?  
[13] A: Yes. Documentation regarding our input  
[14] into various documents to Gadsby & Hannah.  
[15] MR. COMEN: The confusion is "our input."  
[16] Is it BBCC, the company that was owned by the  
[17] Germans, that you're talking about when you say  
[18] "our," or the managers —  
[19] A: The managers of BBCC were providing input  
[20] to Gadsby & Hannah, and the Germans knew about this.  
[21] Mr. Brinkmann and Mr. Hampen were in the office to  
[22] see this.  
[23] Q: Is there an engagement letter between  
[24] Gadsby & Hannah and BBCC?

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[1] A: Not that I'm aware of.  
[2] Q: Is there any bill that was paid to Gadsby &  
[3] Hannah before November 29, 2002, by BBCC?  
[4] A: I don't know. I haven't checked those  
[5] records.  
[6] Q: Are you aware, sitting here today, of any  
[7] bill paid by BBCC prior to November 29, 2002? Are  
[8] you aware of any, to Gadsby & Hannah?  
[9] A: I haven't checked the records.  
[10] Q: So sitting here today, you're not aware of  
[11] any?  
[12] A: I'm not aware of any right now.  
[13] Q: Do you have an employment contract with  
[14] BPI?  
[15] A: It's a shareholders' agreement.  
[16] Q: Is that the only agreement you have with  
[17] respect to your relationship to BPI, the  
[18] shareholders' agreement?  
[19] A: There are, I believe, three documents.  
[20] Q: What are the other documents?  
[21] A: One of them is an employee confidentiality  
[22] and nondisclosure type agreement.  
[23] Q: That's two. What's the third?  
[24] A: I think the third one is a subscription

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[1] agreement for the stock.  
[2] Q: But no employment agreement?  
[3] A: The document I just mentioned, the  
[4] nondisclosure, could be considered an employment  
[5] agreement.  
[6] Q: An employment agreement in the sense of  
[7] setting out terms and conditions of employment other  
[8] than confidentiality, like salary, like severance  
[9] and things of that type of nature, is there such a  
[10] document?  
[11] A: No. That's the only document there is.  
[12] Q: When was that — the shareholders'  
[13] agreement, was that entered into as of November 29,  
[14] 2002?  
[15] A: Yes.  
[16] Q: Is there any documentation reflecting a  
[17] disclosure — documentation reflecting a disclosure  
[18] to the directors of BBCC that Gadsby & Hannah was  
[19] the legal counsel to the management group involved  
[20] in this transaction?  
[21] THE WITNESS: Would you repeat the  
[22] question, please.  
[23] (Question read)  
[24] A: I don't know. There was a lot of

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[1] documentation —  
[2] MR. COMEN: You don't know. You've  
[3] answered that.  
[4] A: I don't know.  
[5] Q: Is there any documentation that you're  
[6] aware of reflecting a disclosure by you to Dr.  
[7] Kraenzlin that Gadsby & Hannah had been retained as  
[8] the legal counsel to the management group in  
[9] connection with the acquisition?  
[10] A: I don't know.  
[11] Q: Do you know who Gadsby & Hannah directed  
[12] its bills to prior to November 29, 2002?  
[13] A: I don't know.  
[14] Q: Well, those bills were paid in December  
[15] 2002, is that correct, by BPI?  
[16] A: Yes. December or January.  
[17] Q: But you don't know who they were directed  
[18] to?  
[19] A: I haven't checked those records.  
[20] Q: The shareholders' agreement that you  
[21] referenced, was that negotiated prior to — if it  
[22] was effective as of November 29th, was it negotiated  
[23] prior to November 29th?  
[24] A: Yes.

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[1] Q: Who negotiated it? Who were the parties to  
[2] the negotiations?  
[3] A: I'd say Jim Wood, Tony Brandano.  
[4] Q: Yourself?  
[5] A: No, I wasn't really involved with it.  
[6] Q: Anyone else?  
[7] A: I wasn't party to those negotiations. I  
[8] don't know who it was.  
[9] Q: Was there any outside counsel involved in  
[10] those negotiations?  
[11] A: Gadsby & Hannah was involved.  
[12] Q: Representing whom?  
[13] A: For that particular document, they were  
[14] representing Hudson.  
[15] Q: Representing Hudson group, but not the rest  
[16] of the management group or the rest of the  
[17] shareholders; is that correct?  
[18] A: For that particular document.  
[19] Q: Who drafted it, do you know?  
[20] A: No.  
[21] Q: Who represented the management group in the  
[22] negotiation?  
[23] A: Goodwin Procter.  
[24] Q: Who at Goodwin Procter?

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[1] A: I believe it was Paul Goren who was  
[2] involved.  
[3] Q: G-o-r-e-n?  
[4] A: Yes.  
[5] MR. BELLO: Just so I'm clear, I assume,  
[6] Steve, that it will still be in your instruction to  
[7] this witness not to answer the question regarding  
[8] the conversation that occurred among and between Mr.  
[9] Wood, Brandano, Miller, Hevrony and Stoler in  
[10] November of 2002?  
[11] MR. COMEN: My instructions will stay the  
[12] same. At some point I'll have a chance to clarify  
[13] the testimony of Mr. Brantl. I can do it now, I can  
[14] do it later, I can do it before Judge Hershfang,  
[15] however.  
[16] MR. BELLO: I'm asking if you are  
[17] instructing him not to answer that question.  
[18] MR. COMEN: Which question?  
[19] MR. BELLO: The question is, I'm asking the  
[20] witness, in light of all the testimony that has been  
[21] presented, to testify as to his best memory as to  
[22] what was said in the conversation between Mr. Wood,  
[23] Mr. Brandano, Mr. Miller, Mr. Hevrony and Mr.  
[24] Stoler, counsel at Gadsby & Hannah, in November of

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[1] 2002, regarding the Non-Competition Agreement.  
[2] MR. COMEN: Yes.  
[3] MR. BELLO: And the basis of that is the  
[4] supposed attorney-client privilege?  
[5] MR. COMEN: What I've said all along.  
[6] MR. BELLO: I'm sorry —  
[7] MR. COMEN: Yes. And at the appropriate  
[8] time I'll clarify. I can clarify it on the record  
[9] through questions with Mr. Brantl, or we can do it  
[10] with Judge Hershfang.  
[11] BY MR. BELLO:  
[12] Q: Do you know if the management group had an  
[13] engagement letter from Goodwin Procter in connection  
[14] with any of the work it did in connection with this  
[15] transaction?  
[16] MR. COMEN: "This transaction" being?  
[17] MR. BELLO: The November 29, 2002,  
[18] acquisition.  
[19] A: Not that I can recall.  
[20] Q: You don't recall one way or the other?  
[21] A: No, I don't.  
[22] Q: And who paid the bill of Goodwin Procter in  
[23] connection with the transaction? For example, with  
[24] respect to the shareholders' agreement, who paid

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[1] that bill?  
[2] A: I haven't specifically checked those  
[3] records, so I can't say one way or the other.  
[4] Q: You have no memory?  
[5] A: I could guess.  
[6] Q: I don't want you to guess. Did you  
[7] personally pay any of the legal fees of Goodwin  
[8] Procter or contribute to the payment of the legal  
[9] fees of Goodwin Procter?  
[10] A: I approved bills, generally.  
[11] Q: I am not asking in your role of general  
[12] counsel. I'm asking you, did you personally, out of  
[13] your own pocket, as opposed to the company pocket,  
[14] pay any of the bills of Goodwin Procter?  
[15] A: No.  
[16] Q: Did Mr. Wood pay any of the bills of  
[17] Goodwin Procter personally?  
[18] A: Not that I'm aware.  
[19] Q: How about Mr. Brandano?  
[20] A: Not that I'm aware.  
[21] Q: So do you have a belief that BPI paid the  
[22] bills of Goodwin Procter in connection with the  
[23] transaction?  
[24] A: It would only be a guess at this point.

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[1] Q: Other than — are you aware of the  
 [2] existence of any letters or any documentation of any  
 [3] kind waiving a conflict of interest between the  
 [4] management group and BBCC in connection with the  
 [5] representation, the alleged representation by Gadsby  
 [6] & Hannah?  
 [7] A: I don't recall any waivers. They were just  
 [8] in our offices —  
 [9] MR. COMEN: You answered already.  
 [10] Q: Up until November 29, 2002, you were  
 [11] employed by BBCC, correct?  
 [12] A: Yes.  
 [13] Q: And you were an officer, correct?  
 [14] A: Yes.  
 [15] Q: And a director, correct?  
 [16] A: Yes.  
 [17] Q: And a general counsel, correct?  
 [18] A: Yes.  
 [19] Q: And in those roles you had fiduciary duties  
 [20] to BBCC; is that correct?  
 [21] A: Yes.  
 [22] Q: And as general counsel, did you consider  
 [23] whether or not you needed a waiver to separate your  
 [24] obligations owed to BBCC as a director, officer and

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[1] general counsel and your role as part of the  
 [2] purchasing group?  
 [3] A: I thought I was fulfilling my fiduciary  
 [4] responsibilities to the company, because the company  
 [5] would eventually have gone bankrupt if we didn't get  
 [6] bought by somebody.  
 [7] Q: Did you consider whether you needed to get  
 [8] a waiver in the context of your dual role, sir?  
 [9] MR. COMEN: I object to "dual role."  
 [10] Q: Well, you would agree with me you had  
 [11] different roles. You had a role as general counsel,  
 [12] an officer and director to the existing entity,  
 [13] right? That's one role; is that a fair  
 [14] characterization?  
 [15] A: Yes.  
 [16] Q: And you also had a role as part of a buying  
 [17] group. Is that a fair characterization as a second  
 [18] role?  
 [19] A: Yes. I was representing, though, when I  
 [20] was — I was representing the company trying to get  
 [21] protection for the company I was working for from  
 [22] the present owner that was going to sell us to this  
 [23] new group who wanted to — I wanted to make sure my  
 [24] company was protected.

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[1] Q: And you were part of the new group too,  
 [2] though, weren't you?  
 [3] A: Yes.  
 [4] Q: Did you consider whether you should have a  
 [5] waiver letter in connection with being a part of the  
 [6] new group as well as being the general counsel,  
 [7] officer, director of the selling group?  
 [8] A: I was protecting BBCC, not the shareholders  
 [9] of BBCC.  
 [10] Q: I'm just asking whether you considered you  
 [11] should get a waiver, a written waiver with respect  
 [12] to any conflict of interest in connection with the  
 [13] representation by Gadsby & Hannah.  
 [14] A: I don't recall thinking I needed that at  
 [15] that point.  
 [16] Q: Did you consider whether you should have a  
 [17] conflict of interest waiver letter between your  
 [18] group and Hudson investments with respect to the  
 [19] representation by Gadsby & Hannah?  
 [20] A: I didn't think — I wasn't aware of any  
 [21] need for that.  
 [22] Q: And up through the present day, have you  
 [23] ever had any conversation with Mr. Stoler regarding  
 [24] whether or not Gadsby & Hannah represented the

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[1] management group as well as Hudson in connection  
 [2] with that transaction?  
 [3] THE WITNESS: Could you repeat the  
 [4] question, please.  
 [5] (Question read)  
 [6] A: I had several conversations with the Gadsby  
 [7] & Hannah attorneys during the October, November time  
 [8] frame. I don't recall the details of them.  
 [9] Q: That's not my question. My question is,  
 [10] have you ever specifically talked with Mr. Stoler,  
 [11] right through the present day, about whether or not  
 [12] Gadsby & Hannah was the managing group's legal  
 [13] counsel in connection with the transaction?  
 [14] A: I can't recall anything —  
 [15] (Telephone interruption)  
 [16] Q: Have you ever specifically asked — have  
 [17] you ever asked Mr. Stoler whether he considered him  
 [18] and Gadsby & Hannah to be the legal counsel of the  
 [19] management buying group in connection with the  
 [20] transaction?  
 [21] THE WITNESS: Could you repeat that  
 [22] question.  
 [23] (Question read)  
 [24] A: I don't recall ever asking him.



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[1] Q: Now, in connection with — well, just going  
[2] back to the Non-Competition Agreement, as I  
[3] understand it, the only two communications that I'm  
[4] aware of that you participated in that you've  
[5] described is the telephone call in November and the  
[6] introductory meeting in September. Were there any  
[7] other communications regarding the Non-Competition  
[8] Agreement and the substance of it that you  
[9] participated in at any time between September and  
[10] November 29, 2002?

[11] THE WITNESS: Would you repeat the  
[12] question.

[13] (Question read)

[14] MR. COMEN: There are two questions. Do  
[15] you want him to answer one? You asked about any  
[16] communications, and then you said "the substance."

[17] Q: Let's start with any communications.

[18] A: I recall reading it and providing input in  
[19] the definitions.

[20] Q: Input to who?

[21] A: Either directly to the Gadsby & Hannah  
[22] attorneys or Jim Wood or Tony Brandano.

[23] Q: Do you have any current memory, sitting  
[24] here today, as to any input that you provided to the

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[1] Q: Do you remember any of the substance —

[2] MR. COMEN: I direct you not to answer.

[3] MR. BELLO: All I'm asking is if he  
[4] remembers.

[5] Q: Yes or no, do you remember the substance of  
[6] the input you gave to the Gadsby & Hannah attorneys?

[7] A: I think I have probably several comments.

[8] I can remember one of them right now.

[9] MR. COMEN: Don't disclose it. I direct  
[10] you not to answer.

[11] Q: The question will be, what was that input?

[12] MR. COMEN: And I direct you not to answer.

[13] MR. BELLO: On the basis of attorney-client  
[14] privilege?

[15] MR. COMEN: Yes.

[16] Q: Other than the input to the Gadsby & Hannah  
[17] attorneys or to Mr. Wood and Brandano in the other  
[18] two meetings, did you participate in any other  
[19] communications regarding the Non-Competition  
[20] Agreement between September and November 2002,  
[21] November 29, 2002?

[22] MR. COMEN: Can you repeat — what was the  
[23] beginning to that? Other than what?

[24] (Question read)

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[1] Gadsby & Hannah attorneys?

[2] MR. COMEN: The substance of it?

[3] MR. BELLO: Well, first, does he have any  
[4] memory as to the — the substance will come  
[5] immediately following, which I'm assuming you will  
[6] instruct him not to answer.

[7] MR. COMEN: Yes.

[8] A: Could you repeat that question.

[9] Q: Let me —

[10] MR. COMEN: So what is it that you want him  
[11] to answer now?

[12] Q: Do you have any memory — I'm not asking  
[13] the substance yet — of any input given to the  
[14] Gadsby & Hannah attorneys regarding the subject  
[15] matter or the language of the Non-Compete Agreement?

[16] A: I have a memory about the terms of the  
[17] market definitions. I don't know — I can't  
[18] remember who I gave that input to.

[19] Q: So you can't separate that, whether you  
[20] gave that to Mr. Brandano, Wood or the Gadsby &  
[21] Hannah lawyers; is that correct?

[22] A: I'm trying to remember right now, and I  
[23] think I gave that to one of the Gadsby & Hannah  
[24] attorneys.

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[1] MR. COMEN: So other than the input —

[2] MR. BELLO: Other than what he's testified  
[3] about is the short answer.

[4] A: In the week prior to the closing, Jim Wood  
[5] and I had a couple of discussions regarding the  
[6] Non-Compete Agreement.

[7] Q: Just you and Mr. Wood?

[8] A: Tony Brandano may have been there.

[9] Q: Anyone else who might have been there?

[10] A: Not that I can recall.

[11] Q: What, then, sir, did you do to investigate  
[12] the negotiations or other communications that led to  
[13] the execution of the Non-Competition Agreement for  
[14] purposes of this deposition today?

[15] A: I've spoken to Jim Wood and Tony and Nathan  
[16] and Dale Miller, when the complaint was filed, and  
[17] had several other discussions with them about the  
[18] negotiations leading up to the Non-Competition  
[19] Agreement.

[20] Q: And those discussions including as part of  
[21] your preparation for this deposition as a corporate  
[22] witness?

[23] A: More as my role as general counsel.

[24] Q: Have those conversations occurred — well,

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[1] I'm asking you specifically what you did to prepare  
[2] for the deposition as corporate witness to  
[3] investigate the negotiations or other communications  
[4] that led to the execution of the Non-Competition  
[5] Agreement.

[6] A: I looked at the various correspondence  
[7] about six months ago, and I looked at it yesterday.

[8] Q: I'm not going to ask you the substantive  
[9] question. Let me try it a different way, sir. In  
[10] connection at any time, did you discuss with Mr.  
[11] Wood the negotiations and the communications that  
[12] occurred that he had with anyone from BB AG  
[13] regarding the Non-Competition Agreement?

[14] THE WITNESS: Could you repeat the  
[15] question.

[16] (Question read)

[17] A: Yes, I've had discussions with Mr. Wood.

[18] MR. BELLO: Are you going to instruct him  
[19] not to answer?

[20] MR. COMEN: Yes.

[21] Q: So in your role in preparing for this  
[22] deposition and investigating, you talked — Mr. Wood  
[23] described to you conversations that he had either —  
[24] with BB AG regarding the back and forth on the

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[1] MR. COMEN: Go ahead.

[2] BY MR. BELLO:

[3] Q: Did you have any conversations with Mr.  
[4] Wood regarding communications he had with others  
[5] within the management group or the Hudson group  
[6] regarding the Non-Competition Agreement?

[7] THE WITNESS: Could you repeat the  
[8] question.

[9] (Question read)

[10] A: I just can't recall right now.

[11] Q: Did you have any conversations with Mr.  
[12] Brandano regarding any of the communications — and  
[13] I'll break this down into two categories — that  
[14] occurred with respect to the Non-Competition  
[15] Agreement with BB AG, Mr. Brandano describing to you  
[16] what was said back and forth with respect to the  
[17] Non-Competition Agreement with BB AG?

[18] THE WITNESS: Could you repeat the  
[19] question.

[20] (Question read)

[21] A: I may have had some discussions with him  
[22] yesterday when we were preparing for this  
[23] deposition.

[24] Q: What did he tell you?

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[1] Non-Compete Agreement, correct?

[2] A: Yes.

[3] Q: What were those conversations?

[4] MR. COMEN: I direct you not to answer.

[5] MR. BELLO: I am going to again put on the  
[6] record, I believe this is a complete subterfuge of  
[7] the obligation of a corporate witness. You've  
[8] presented Mr. Brantl as a corporate witness, but you  
[9] are raising an attorney-client privilege on the very  
[10] topics that he was obligated to investigate and  
[11] present information on.

[12] MR. COMEN: Okay.

[13] MR. BELLO: Is that — is there any other  
[14] basis by which he's not presenting testimony?

[15] MR. COMEN: You know, Mr. Brandano is going  
[16] to be deposed in two days.

[17] MR. BELLO: He's not the corporate witness.

[18] MR. COMEN: We have agreed to a date for  
[19] Mr. Wood.

[20] MR. BELLO: We're entitled to a corporate  
[21] witness.

[22] MR. COMEN: You know, knock yourself out.

[23] MR. BELLO: Make sure that's on the record,  
[24] please.

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[1] MR. COMEN: I direct him not to answer.

[2] Those discussions took place with me.

[3] MR. BELLO: So you direct him on the  
[4] attorney-client privilege even though he is a  
[5] corporate witness.

[6] MR. COMEN: We were meeting together.

[7] MR. BELLO: Again, I'm going to state for  
[8] the record, the corporate witness has the obligation  
[9] to gather facts and to be able to respond. The  
[10] corporate witness cannot put on the role of an  
[11] attorney-client privilege. Then someone other than  
[12] general counsel should have been presented as a  
[13] corporate witness.

[14] MR. COMEN: We can only do them one at a  
[15] time.

[16] MR. BELLO: We're entitled to a corporate  
[17] witness.

[18] MR. COMEN: I mean, how many times do you  
[19] have to make that point? I'll make that point.

[20] Let's be clear. You know, we could have had this  
[21] discussion before Judge Hershfang when we were  
[22] meeting with him in anticipation of this issue  
[23] coming up. If you were going to spend so much time  
[24] in this discussion today, we could have raised the

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[1] question with Judge Hershfang.  
[2] MR. BELLO: I didn't expect that the  
[3] witness would decline to provide the information.  
[4] MR. COMEN: Well, you seem to be prepared  
[5] with a memorandum that appears lengthy with  
[6] Magistrate Collings.  
[7] MR. BELLO: That's the obligation of the —  
[8] MR. COMEN: At any rate, we could have had  
[9] this discussion with Judge Hershfang. I would have  
[10] been happy to have it with him.  
[11] MR. BELLO: We will have it at an  
[12] appropriate time.  
[13] MR. COMEN: Okay.  
[14] MR. BELLO: So you are instructing him not  
[15] to answer.  
[16] BY MR. BELLO:  
[17] Q: Did you have any conversation with Mr.  
[18] Hevrony regarding his memory of the negotiations  
[19] with respect to the Non-Compete Agreement?  
[20] A: Yes. I believe that was one of the items  
[21] that we discussed back in September.  
[22] Q: September of this year?  
[23] A: Yes.  
[24] Q: Is that the only time you've had a

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[1] Q: And in the — and both of these, the  
[2] September and the production of documents  
[3] conversations, both occurred after the Rule 30(b)(6)  
[4] notice, original Rule 30(b)(6) notice, had been  
[5] issued; is that correct?  
[6] A: I don't know.  
[7] Q: Well, if I represent to you that the date  
[8] of the letter to Mr. Comen was August 29, 2005, and  
[9] that was the second letter — the original Rule  
[10] 30(b)(6) was not dated as to a specific date. The  
[11] deposition went out, I believe, in July. Is it fair  
[12] to say those conversations occurred after you had  
[13] seen the Rule 30(b)(6) notice?  
[14] MR. COMEN: I'm sorry, when was the  
[15] complaint filed?  
[16] MR. BELLO: The complaint was filed  
[17] probably a year earlier.  
[18] MR. COMEN: I thought he said sometime  
[19] around the time of the complaint.  
[20] MR. BELLO: That's right. That's the first  
[21] one. Then he said two — one was after September of  
[22] 2005.  
[23] Q: Is it fair to say that those conversations  
[24] occurred after you first saw the Rule 30(b)(6)

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[1] conversation with Mr. Hevrony regarding the  
[2] negotiations with respect to the Non-Competition  
[3] Agreement?  
[4] A: I think I've had previous conversations  
[5] with him.  
[6] Q: How many?  
[7] A: I think two.  
[8] Q: Do you recall when?  
[9] A: I believe we discussed it when the  
[10] complaint was filed and in regard to the production  
[11] of documents.  
[12] Q: Was the conversation with respect to the  
[13] production of documents before or after the  
[14] September conversation?  
[15] A: I think it was one before and one after.  
[16] Q: So that would be four total?  
[17] A: No, those two conversations. One was  
[18] before and one was after.  
[19] Q: The one when the complaint was filed would  
[20] have been before?  
[21] A: Yes.  
[22] Q: And the one about the production of  
[23] documents would have been after?  
[24] A: Yes.

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[1] notice of deposition?  
[2] A: Yes. The meeting in September occurred  
[3] afterwards, and I believe I spoke to Mr. Hevrony in  
[4] October or November.  
[5] Q: Have you reviewed any summaries or  
[6] chronologies of events in connection with  
[7] preparation for the deposition today?  
[8] A: I looked at a chronology yesterday.  
[9] Q: Created by who?  
[10] MR. COMEN: Counsel.  
[11] A: Goodwin Procter.  
[12] Q: Has the chronology been produced?  
[13] MR. COMEN: No.  
[14] Q: I assume you reviewed that to better  
[15] refresh your recollection of the events that have  
[16] occurred in the chronology? Please answer the  
[17] question.  
[18] A: I didn't need that chronology.  
[19] Q: Did it refresh your recollection?  
[20] A: Maybe a little bit.  
[21] Q: And what did Mr. Hevrony say to you and  
[22] what did you say to him in connection with the  
[23] Non-Competition Agreement?  
[24] MR. COMEN: I object. I instruct him not

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[1] to answer.

[2] **Q:** I assume the conversation with Mr.

[3] Hevrony — he's going to instruct you — let me try  
[4] it a different way.

[5] Is it fair to say that Mr. Hevrony  
[6] reflected to you his memory of the communications  
[7] that occurred in connection with the negotiation of  
[8] the Non-Competition Agreement? Is that correct?

[9] **THE WITNESS:** Would you repeat the  
[10] question.

[11] (Question read)

[12] **THE WITNESS:** Could you repeat it again.

[13] (Question read)

[14] **A:** I just remember that we discussed —

[15] **MR. COMEN:** Go ahead.

[16] **A:** We discussed the noncompetition  
[17] negotiations back in November of 2002.

[18] **Q:** Did he describe to you the discussions he  
[19] had with Dr. Kraenzlin and Ludger Kramer in 2002?

[20] **A:** I believe we had some general discussions  
[21] about that.

[22] **Q:** Did he discuss with you or did he — let me  
[23] try that again. Did the subject matter of the GE  
[24] example come up in your communications with Mr.

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[1] three or four hours we've been discussing this  
[2] matter.

[3] **Q:** You need to answer my question, sir, not  
[4] your assessment of the quantum of information you  
[5] gave, with all due respect.

[6] Other than — I've tried to elicit from  
[7] you, sir, what investigation you undertook to be  
[8] prepared to testify as a corporate witness. You've  
[9] testified that you've reviewed documents, some of  
[10] which you claim to be privileged. You've testified  
[11] that you've had various conversations with, among  
[12] others, Mr. Hevrony, Mr. Brandano, Mr. Wood, Mr.  
[13] Kramer — I'm sorry, not Mr. Kramer — Mr. Hevrony,  
[14] Mr. Brandano, Mr. Wood, all of which you have been  
[15] instructed not to disclose on a supposed  
[16] attorney-client privilege.

[17] What communications have you had as part of  
[18] your investigation that is not claimed to be  
[19] privileged, sir, that you can testify about?

[20] **MR. COMEN:** Take the heads of agreement  
[21] document that you have that was produced and ask him  
[22] about that.

[23] **MR. BELLO:** Steve, if I want you as my  
[24] witness, I'll direct my questions to you.

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[1] Hevrony, either in September or — at the September  
[2] meeting or in the conversation that occurred  
[3] afterwards?

[4] **MR. COMEN:** You know, I'm not sure at what  
[5] point we're getting past the privilege question, so  
[6] I think I'll direct him not to answer at this point.  
[7] You're getting into what was discussed.

[8] **Q:** So other than privileged — what your  
[9] counsel identifies as privileged information, what  
[10] else did you do to be able to come here today as the  
[11] corporate witness?

[12] You had conversations with Mr. Hevrony, Mr.  
[13] Wood, Mr. Brandano about the subject matter of the  
[14] seven items. You said you've reviewed documents.  
[15] What outside of your privilege role did you do to be  
[16] the corporate witness today for which you are  
[17] prepared to testify about? Because if I —

[18] **MR. COMEN:** In connection with the subjects  
[19] listed here?

[20] **MR. BELLO:** Right.

[21] **MR. COMEN:** Okay. Do you want to look at  
[22] subjects again?

[23] **A:** (Reviewing document) I believe I've given  
[24] you a tremendous amount of information during the

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[1] **A:** I've been answering questions for three or  
[2] four hours, and I don't understand why you're saying  
[3] what you're saying.

[4] **Q:** Your attorney can explain that at a break.  
[5] Is there any communication that you have had as part  
[6] of your investigation with any individual that you  
[7] are prepared to testify about in terms of the  
[8] information, the investigation you did to be able to  
[9] testify on these seven topics, sir?

[10] **A:** I've given you the identity of the persons  
[11] involved in these topics.

[12] **Q:** I'm asking the substance.

[13] **A:** The location of the documents —

[14] **Q:** I'm asking, is there any communication you  
[15] have had with any individual that you are prepared  
[16] to testify today as to the substance of the  
[17] communications that you had with respect to your  
[18] investigation of these seven topics? If the answer  
[19] is no, you can tell me no, you're not prepared to  
[20] testify as to any communication.

[21] **MR. COMEN:** I believe you'll find that this  
[22] witness is prepared to testify with respect to  
[23] numerous documents that have been turned over to you  
[24] in discovery, such as the document about the heads

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[1] of agreement that you refuse to ask him about that  
[2] is one of the substantive issues in the case.

[3] Q: Can you now answer my question, sir,  
[4] please.

[5] THE WITNESS: Could you repeat the  
[6] question.

[7] (\* Question read)

[8] A: I think I've already discussed the various  
[9] communications and answered your questions.

[10] MR. COMEN: And for the record, this  
[11] witness is prepared to testify about numerous of the  
[12] nonprivileged documents that were produced to you in  
[13] discovery with respect to the topics that are listed  
[14] here, except for No. 8.

[15] MR. BELLO: I'm going to ask my question —

[16] MR. COMEN: The only exhibit that's been  
[17] marked in today's deposition — we're now after four  
[18] o'clock in the afternoon; we started at ten.

[19] MR. WELSH: We started at a quarter past  
[20] ten.

[21] MR. COMEN: — is the 30(b)(6) deposition  
[22] notice.

[23] Q: Let me try my question for the fifth time.

[24] Is there any communication, sir, with any individual

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[1] in Hawaii where other people were participants. I  
[2] think we've been clear.

[3] MR. BELLO: This is my deposition, sir.

[4] I'm not asking you about documents at this juncture.  
[5] Maybe, hopefully, someday we'll get there.

[6] Q: Is there any — on Item No. 1, sir, that's  
[7] all I've been talking about for the last hour,  
[8] trying to get some testimony. Are you prepared to  
[9] testify as to any communications that you had with  
[10] respect to the subject matter there that you had  
[11] with Mr. Hevrony, Mr. Wood or Mr. Brandano regarding  
[12] the events that occurred, the negotiation of the  
[13] Non-Competition Agreement?

[14] MR. COMEN: Separate and apart from events  
[15] when other people were present?

[16] MR. BELLO: That's correct. Well, let me  
[17] be clear about that. Let me — maybe we're two  
[18] ships passing in the night.

[19] MR. COMEN: I think we are. If you take,  
[20] for example —

[21] MR. BELLO: Could you —

[22] MR. COMEN: You're asking about what I'm  
[23] instructing him not to answer.

[24] MR. BELLO: Steve —

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[1] that you've had in preparing for this deposition on  
[2] the topics that you are prepared to testify about,  
[3] specifically the substance of that communication,  
[4] what was said to you, what was said to that  
[5] individual, with respect to any of the events that  
[6] are identified in the Rule 30(b)(6) notice?

[7] A: I guess — do you want to go one by one,  
[8] the communications regarding these subjects, and —

[9] Q: Well, I don't want to waste a lot of time

[10] if you're going to refuse to testify as to what Mr.  
[11] Hevrony told you and what Mr. Wood told you on the  
[12] attorney-client privilege. Then we might as well  
[13] just have that. I want to be clear that you are not  
[14] prepared as a Rule 30(b)(6) witness to testify  
[15] regarding anything that was disclosed to you in your  
[16] gathering information for this deposition.

[17] MR. COMEN: That's your characterization.

[18] MR. BELLO: Well, then we can go through it  
[19] one by one.

[20] MR. COMEN: If you want to go through  
[21] various documents —

[22] MR. BELLO: No.

[23] MR. COMEN: — where other people were

[24] participants, if you want to go through the meetings

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[1] MR. COMEN: Okay.

[2] Q: As I understand your testimony — let's  
[3] take Mr. Brandano. He has told you about the  
[4] negotiations and the communications, the discussions  
[5] that were had between Mr. Brandano and  
[6] representatives of BB AG; is that correct? That  
[7] would be Dr. Kraenzlin and/or Mr. Kramer.

[8] A: I don't believe — I don't believe Tony  
[9] Brandano had direct discussions with —

[10] Q: Then let's use Mr. Wood or Mr. Hevrony.  
[11] Mr. Hevrony described to you communications that he  
[12] had with Mr. Kramer and/or Dr. Kraenzlin with  
[13] respect to the Non-Competition Agreement; is that  
[14] correct?

[15] A: I believe he told me that he had  
[16] discussions in November 2002 about the  
[17] Non-Competition Agreement, but I don't remember him  
[18] saying what the substance was.

[19] Q: Well, as part of your investigation of  
[20] being the corporate witness today, did you ask him  
[21] what was the substance of those communications?

[22] A: I believe we did discuss something about it  
[23] in September, last September.

[24] Q: And when you say "something," that included



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[1] the communications that he had with representatives  
[2] of BB AG on the subject matter of the Non-Compete  
[3] Agreement; is that correct?  
[4] A: Yes. We had some —  
[5] MR. COMEN: And this is where I've  
[6] instructed him. So — we can keep going through  
[7] this, but having in mind that it's time to break —  
[8] MR. BELLO: Well —  
[9] MR. COMEN: If you want to thrash out our  
[10] view for privilege with Judge Hershfang so that  
[11] we'll have productive depositions, I'm happy to do  
[12] that whenever it's convenient for people to do that.  
[13] MR. BELLO: We're going to file a motion to  
[14] compel, Steve. We're not going to have a  
[15] free-for-all on this.  
[16] MR. COMEN: I'm welcoming that discussion  
[17] with Judge Hershfang sooner rather than later.  
[18] MR. BELLO: I'm trying to be clear. Maybe  
[19] you can tell me if I'm wrong. It is clear that you  
[20] will not let this witness testify about any  
[21] conversations he had in gathering facts and  
[22] information regarding the events, whether they  
[23] involve internal discussions or with the other side,  
[24] that is our side, BB AG, regarding the topic of the

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[1] negotiating of the Non-Compete Agreement.  
[2] MR. COMEN: No, no, no, no. I don't think  
[3] you characterized that correctly.  
[4] So this witness is anxious to get on the  
[5] Mass. Turnpike to get back to his office to take  
[6] care of some pressing business. We can keep  
[7] thrashing this out on the record, off the record, I  
[8] don't care.  
[9] MR. BELLO: We understood that the witness  
[10] was not available yesterday because of meetings, but  
[11] according to the witness he spent the day meeting  
[12] with you guys. So we're having a little trouble  
[13] with your representations. That's what you said to  
[14] Judge Hershfang.  
[15] MR. COMEN: Okay. Why don't we suspend the  
[16] deposition. Let's go.  
[17] I'll do whatever you want fairly.  
[18] MR. BELLO: Off the record.  
[19] (Discussion off the record)  
[20] (Whereupon the deposition was  
[21] adjourned at 4:12 p.m.)  
[22]  
[23]  
[24]

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CERTIFICATE

[1] I, James S. Brantl, do hereby certify that I  
[2] have read the foregoing transcript of my testimony,  
[3] and further certify under the pains and penalties of  
[4] perjury that said transcript (with/without)  
[5] suggested corrections is a true and accurate record  
[6] of said testimony.  
[7] Dated at \_\_, this day of ,  
[8] 2006.  
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[1] COMMONWEALTH OF MASSACHUSETTS)  
[2] SUFFOLK, SS. )  
[3] I, Carol H. Kusnitz, Registered Professional  
[4] Reporter and Notary Public in and for the  
[5] Commonwealth of Massachusetts, hereby certify that  
[6] there came before me on the 20th day of December,  
[7] 2005, at 10:07 a.m., the person hereinbefore named,  
[8] who was by me duly sworn to testify to the truth and  
[9] nothing but the truth of his knowledge touching and  
[10] concerning the matters in controversy in this cause;  
[11] that he was thereupon examined upon his oath, and  
[12] his examination reduced to typewriting under my  
[13] direction; and that the deposition is a true record  
[14] of the testimony given by the witness.  
[15] I further certify that I am neither attorney or  
[16] counsel for, nor related to or employed by, any  
[17] attorney or counsel employed by the parties hereto  
[18] or financially interested in the action.  
[19] In witness whereof, I have hereunto set my hand  
[20] and affixed my notarial seal this \_\_\_\_ day of  
[21] December, 2005.  
[22]  
[23] Notary Public  
[24] My commission expires 6/2/06

**Lawyer's Notes**

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